BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SANDRA L. MEDLIN Claimant	)	
VS.	)	
SOUTHWESTERN BELL TELEPHONE Respondent	)	Docket No. 244,701
AND	)	
LIBERTY MUTUAL INSURANCE CO. Insurance Carrier	)	

ORDER

Respondent and its insurance carrier requested review of the March 2, 2006 Order by Administrative Law Judge Nelsonna Potts Barnes. Both parties submitted briefs and the Board placed this case on the summary docket for disposition without oral argument.

APPEARANCES

David H. Farris of Wichita, Kansas, appeared for the claimant. Anton C. Andersen of Kansas City, Kansas, appeared for respondent and its insurance carrier.

ISSUES

This is an appeal from the Administrative Law Judge's (ALJ) Order granting claimant's request for penalties against the respondent for failure to pay medical bills in a timely manner.

The ALJ found the respondent's arguments for not paying authorized medical bills were without merit and therefore ordered respondent to pay the outstanding medical bills and $466.13 in penalties to the claimant.

The respondent requests review of whether the ALJ erred in ordering the payment of penalties on and the payment of the medical bills themselves that had not been presented as part of claimant's 20-day demand letter. Respondent additionally argues the bills were not submitted in the proper form or with the right documentation and there was

no evidence the treatment was causally related to claimant's injury. Consequently, respondent requests the Board to reverse the ALJ's Order.

Claimant argues the Board does not have jurisdiction to review the ALJ's Order and therefore the appeal should be dismissed. In the alternative, the claimant requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

As a result of previous preliminary hearings, the ALJ found claimant suffered repetitive injuries to her bilateral upper extremities. Claimant was provided medical and temporary total disability compensation for those injuries.

In a September 8, 1999, preliminary hearing Order, the ALJ also found that claimant's pre-existing psychological condition had worsened as a direct result of her work-related physical injuries. The ALJ then granted claimant's request for medical treatment for her psychological condition. Respondent requested termination of the psychological treatment and in a November 19, 1999 preliminary hearing Order, the ALJ denied respondent's request. In an Order dated February 23, 2000, the Board dismissed respondent's request for review finding it did not have jurisdiction to review a preliminary finding regarding the nature and extent of disability as well as medical treatment.[1]

Claimant continued to receive psychological treatment from the authorized doctor. According to argument of claimant's counsel at the penalty hearing on February 14, 2006, the parties apparently were close to a settlement and respondent discontinued payment of medical bills. A final settlement agreement was not reached and claimant filed a 20-day demand letter for payment of bills accrued from December 1, 2004, through September 26, 2005, at Comcare of Sedgwick County in the amount of $1,266.99.

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[1] At the time of that order the Board held that the ability to directly trace psychological or psychiatric injury to a physical injury concerned only the nature and extent of the disability and was without jurisdiction to review the question upon appeal of a preliminary hearing. The Board now considers this analysis was wrong. Whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Stated another way, it gives rise to a disputed issue of whether the psychological condition arose out of and in the course of the employment. Accordingly, the Board now finds it has jurisdiction upon an appeal from a preliminary hearing to address the issue whether a claimant's psychological condition is directly traceable to his or her work-related accident and the resulting physical injury.

At the penalty hearing, the claimant requested penalties for additional medical bills with a cumulative total of $4,661.37. The ALJ ordered penalties in the amount of $466.13 and made the following pertinent findings:

> 1. On September 8, 1999, this Court ordered authorized psychological treatment and temporary total disability benefits for claimant.
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> 2. On November 18, 1999, respondent requested to terminate benefits and their request was denied.
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> 3. The order for authorized psychological treatment remains in full force and effect.
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> 4. Respondent has paid the bills for claimant's psychological treatment since the Court's order of 1999, but last year in July of 2005, respondent stopped paying the bills.
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> 5. Respondent admits to purposely and intentionally failing to pay the authorized medical bills because of the following arguments: (a) the medical treatment claimant is receiving is not causally related to her work injury; (b) the demand letter requested payment of $1,266.99 and at the hearing claimant requested payment in excess of $4,000.00; (c) the medical bills for which claimant is requesting payment are not in the appropriate form for payment.
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> 6. The Court finds that respondent's arguments for not paying the authorized medical bills are without merit. (a) respondent paid the bills from the date of the Court's last order of November 18, 1999 until they unilaterally stopped payment in July of 2005. Respondent should have filed a motion to terminate medical benefits if they believe the authorized medial treatment is not causally related to the compensable work injury: (b) the orders issued September 8, 1999 and November 18, 1999 remain in full force and effect and, the bills continue [to] aggregate and grow as respondent continues to refuse payment. (c) respondent paid the medical bills submitted by this authorized medical provider for over five (5) years without protesting to this Court that the bills were not being submitted in the proper form.[2]

Initially, the claimant alleges the Board does not have jurisdiction to review the ALJ's preliminary order. The hearing conducted on February 14, 2006, was not a preliminary hearing. It was a motion hearing on claimant's application for penalties. An award of penalties under K.S.A. 44-512a is not a preliminary award, but instead is a final order.[3] It is subject to de novo review on the record as a final order provided written request for

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[2] ALJ Order (Mar. 6, 2006) at 1-2.

[3] *Waln v. Clarkson Constr. Co.*, 18 Kan. App. 2d 729, 861 P.2d 1355 (1993); *Stout v. Stixon Petroleum*, 17 Kan. App. 2d 195, 836 P.2d 1185, *rev. denied* 251 Kan. 942 (1992).

review is filed within ten days from the order's effective date.[4] Consequently, the Board has jurisdiction to review the ALJ's final order assessing penalties against respondent.

K.S.A. 44-512a(a) (Furse 1993) provides:

> In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of not more than $100 per week for each week any disability compensation is past due and in an amount **for each past due medical bill** equal to the larger of either the sum of $25 or the sum equal to 10% of **the amount which is past due on the medical bill,** if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand. (Emphasis added)

In *Stout*[5], the Court noted:

> Before a penalty may be imposed, the statute essentially requires (1) an award of compensation which is due and payable, but has not been paid, (2) service of a written demand for payment, and (3) the passage of 20 days from the service of demand without payment of the compensation due.[6]

In *Hallmark*[7], it was stated: "A statutory demand under [K.S.A.] 44-512a can only be effective for compensation awarded the claimant then due and unpaid. (*Damon v. Smith County*, 191 Kan. 564, 382 P.2d 311.)"

The statute requires the items claimed to be past due be set forth with particularity. This requirement eliminates any issue about whether a respondent knew or should have known what benefits were unpaid and past due. The statutory demand letter sent in this case requested payment for claimant's treatment from 12/01/04 through 09/26/05 with Comcare of Sedgwick County in the amount of $1,266.99. But claimant had continued to receive treatment and at the time of the penalty hearing the claimant introduced, over

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[4] K.S.A. 44-551(b)(1); K.S.A. 44-555c(a).

[5] *Stout v. Stixon Petroleum*, 17 Kan. App. 2d 195, 836 P.2d 1185, *rev. denied* 251 Kan. 942 (1992).

[6] *Id.* at 198.

[7] *Hallmark v. Dalton Construction Co.*, 206 Kan 159, 161, 476 P.2d 221 (1970).

objection, additional bills that increased the total to $4,661.30. The ALJ then awarded penalties based upon the cumulative total rather than the lesser amount specified in claimant's 20-day demand letter.

As previously noted, a demand letter must set forth with particularity the amount of the bill that is past due. When the demand letter was sent to respondent that amount was $1,266.99. Accordingly, the penalty could be no greater than $126.69. Despite the fact that respondent was or should have been aware of these bills, the Board is compelled to adhere to and enforce the statute. Consequently, the ALJ's Order is modified to assess penalties against respondent in the amount of $126.69.

Respondent's counsel next argues that because the medical bills were not submitted on an HCFA 1500 form as required by the fee schedule the billings will not support a demand for penalties. The Board finds this argument to be disingenuous.

Initially, it should be noted that at the time the billings in question were submitted the Kansas Workers Compensation Schedule of Medical Fees required that medical bills be submitted using the CMS (formerly HCFA) 1500 form or an equivalent form containing the same information.[8] The CMS 1500 form is intended, at least in part, to ensure that the medical billing statement provides the information necessary to determine whether the billing complies with the fee limits set in the fee schedule. An equivalent form is specifically acceptable as long as it contains the same information.

As noted by the ALJ, the respondent and carrier apparently had no difficulty over a number of years with paying the medical providers based upon the form of the bills submitted. And if a problem developed with the form of medical bills being submitted for payment then it would be incumbent upon the carrier to request the provider to send the medical billings on the CMS 1500 form or its equivalent. The record at the penalty hearing contains no indication that the carrier had requested the providers send their medical billings on the CMS 1500 form or that it had ever alleged that the bills were not in conformity with the fee schedule. That fact coupled with continued payment over several years indicates the form of billings utilized by the providers in this case were at least equivalent to the CMS 1500 form. Respondent's counsel simply makes the blanket argument the bills were not in the correct form without further explanation what information was missing on the submitted medical billings. Based upon the record in this case, such an argument fails.

Finally, respondent complains that there was no showing the medical bills for claimant's ongoing psychological treatment were related to claimant's carpal tunnel injury.

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[8] Kansas Workers Compensation Schedule of Medical Fees, December 2003, at 1; Kansas Workers Compensation Schedule of Medical Fees, December 2005, at 1. (This Schedule of Medical Fees, planned for implementation December 1, 2005, was approved by the Workers Compensation Director on July 27, 2005.)

Claimant offered the past due medical bills and indicated that they were from the authorized medical provider. The respondent only objected to the introduction of the medical bills on the basis the bills were not on the appropriate form. Respondent argued the ongoing medical records did not refer to the bilateral carpal tunnel injury but further agreed the ongoing treatment records were simply silent about the treatment being related. And respondent admitted it did not have any records that indicated claimant's treatment was not causally related. As noted by the ALJ, if respondent had evidence that the treatment was not related then it should file a motion to terminate treatment. Consequently, the Board modifies the ALJ's Order to impose penalties of $126.69 and affirms the ALJ in all other respects.

AWARD

WHEREFORE, it is the decision of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 2, 2006, is modified to impose a penalty of $126.99 against respondent and affirmed in all other respects.

IT IS SO ORDERED.

Dated this _____ day of May 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director